



Department of Energy
Washington, DC 20585

MAP 2 C 2019

Charlie Spatz
MuckRock News
DEPT MR 49410
411A Highland Ave
Somerville, MA 02144

Via email: 49410-57799314@requests.muckrock.com

Re: HQ-2018-00711-F

Dear Mr. Spatz:

This is the final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

Copy of Alexander Fitzsimmons' (Chief of Staff and Senior Adviser at the Department of Energy's Office of Energy Efficiency and Renewable Energy) schedule from October 5th, 2017, through the processing date of this request.

In a March 7, 2018, email exchange with Ms. Auborn Finney, formerly of this office, you agreed that you would pay up to \$200.00 for the processing of your request.

Your request was assigned to DOE's Office of Energy Efficiency and Renewable Energy (EE) to conduct a search of its files for responsive documents. EE started its search on March 15, 2018, which is the cut-off date for responsive documents. EE has completed its search and identified one (1) document responsive to your request. This document is being released to you in part as described in the accompanying index.

Upon review, DOE has determined that certain information should be withheld in the document pursuant to Exemptions 3, 5, 6, 7(C), and 7(E) of the FOIA, 5 U.S.C. § 552(b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

Exemption 3 protects from disclosure information "specifically exempted from disclosure by statute (other than section 552(b) of this title), if that statute--(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld[.]" The National Security Act of 1947, 50 U.S.C. § 3001, et seq., is one such statute that falls within the coverage of Exemption 3. *See CIA v. Sims*, 471 U.S. 159, 167 (1985) ("Section 102(d)(3) of the National Security Act of 1947, which calls for the Director of Central Intelligence to protect 'intelligence sources and methods,' clearly 'refers to particular types of matters,' 5 U.S.C. § 552(b)(3)(B), and thus qualifies as a withholding statute under Exemption 3.").

The Act permits the redactions of both sensitive unclassified information and classified information, such as intelligence methodology and intelligence and counterintelligence personnel involved in these activities. The information withheld under Exemption 3 consists of the name,



phone number, email address, and other identifying information of a member of the intelligence community, the disclosure of which could reveal the nature of intelligence activities.

Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency.” 5 U.S.C. § 552(b)(5). This exemption has been construed to exempt those documents normally privileged in the civil discovery context, such as attorney-client communications, attorney-work product documents, and deliberative process material.

The information withheld under Exemption 5 has been deemed pre-decisional and deliberative in nature. The DOE may consider these preliminary views as part of the process that will lead to the agency’s final decision about these matters. The information does not represent a final agency position, and its release would compromise the deliberative process by which the government makes its decisions. Withholding this information protects against the premature disclosure of proposed policies regarding personnel matters, protects the candor of intra-agency communications, and prevents confusion to the public that could result from disclosing alternative rationales for agency decisions.

Exemption 6 generally is referred to as the “personal privacy” exemption; it provides that the disclosure requirements of FOIA do not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). In applying Exemption 6, DOE considered: 1) whether a significant privacy interest would be invaded; 2) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and 3) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

The information withheld under Exemption 6 consists of mobile and other nonpublic phone numbers, personal email addresses, passwords or access codes, travel itinerary details, and other personal information. This information qualifies as “similar files” because it is information in which an individual has a privacy interest. Moreover, releasing the information could subject the individual to unwarranted or unsolicited communications. Since no public interest would be served by disclosing this information, and since there is a viable privacy interest that would be threatened by such disclosure, Exemption 6 authorizes withholding the information. Therefore, we have determined that the public interest in the information’s release does not outweigh the overriding privacy interests in keeping it confidential.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” that fall within the purview of one or more of six enumerated categories. To qualify under Exemption 7, the information must have been compiled, either originally or at some later date, for a law enforcement purpose, which includes crime prevention and security measures, even if that is only one of the many purposes for compilation.

Exemption 7(C) provides that, “records of information compiled for law enforcement purposes” may be withheld from disclosure, but only to the extent that the production of such documents “could reasonably be expected to constitute an unwarranted invasion of personal privacy...” In applying Exemption 7(C), DOE considered whether a significant privacy interest would be

invaded, whether the release of the information would further the public interest in shedding light on the operations or activities of the Government, and whether in balancing the privacy interests against the public interest, disclosure would constitute unwarranted invasion of privacy.

The information withheld under Exemption 7(C) consists of travel logistics. There is a significant risk in releasing such travel-related information, which if known, may result in unwarranted invasion of privacy and could reasonably pose a serious threat to the individual in question. Releasing this information would reveal little about the operations or activities of the Government. Therefore, disclosure of this information could reasonably be expected to constitute an unwarranted invasion of personal privacy, and this information will be withheld pursuant to Exemption 7(C).

Exemption 7(E) provides that “records or information compiled for law enforcement purposes” may be withheld from disclosure, but only to the extent that the production of such documents “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

The information withheld under Exemption 7(E) consists of secure conference room numbers. That information was compiled for preventative law enforcement and/or security purposes to prevent future illegal acts in the form of cyber security intrusions. Because the redacted portions of the enclosed document contain information about DOE’s investigative techniques that could be used by an individual to obtain classified or sensitive information on DOE networks without authorization, we are withholding this information pursuant to Exemption 7(E).

This satisfies the standard set forth in the Attorney General’s March 19, 2009, memorandum that when a FOIA request is denied, agencies will be defended and justified in not releasing the material on a discretionary basis “if (1) the agency reasonably foresees that disclosure will harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.” The Attorney General’s memorandum also provides that whenever full disclosure of a record is not possible, agencies “must consider whether they can make a partial disclosure.” Thus, we have determined that, in certain instances, a partial disclosure is proper. This also satisfies DOE’s regulations at 10 C.F.R. § 1004.1 to make records available which it is authorized to withhold under 5 U.S.C. § 552 when it determines that such disclosure is in the public interest. Accordingly, we will not disclose this information.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the determination to withhold the information described above. The FOIA requires that “any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). As a result, redacted versions of the documents are being released to you in accordance with 10 C.F.R. § 1004.7(b)(3).

This determination, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L’Enfant Plaza, U.S. Department

of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line (This is the method preferred by the Office of Hearings and Appeals.). The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

You may contact DOE's FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955, or by mail at MA-46/Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

The FOIA provides for the assessment of fees for the processing of requests. *See* 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. § 1004.9(a). In our March 13, 2018, letter, you were informed that your request was placed in the "other" category for fee purposes. Requesters in this category are provided with two free hours of search time and 100 free pages of duplication. DOE's processing costs did not exceed \$15.00, the minimum amount at which DOE assesses fees. Thus, no fees will be charged for processing your request.

If you have any questions about the processing of the request or this letter, you may contact me or Ms. Rachel Fellows of my office at:

MA-46/Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 287-6831

I appreciate the opportunity to assist you with this matter.

Sincerely,



Alexander C. Morris
FOIA Officer
Office of Public Information

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